

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES R. EVANS,

Plaintiff,

Case No. 1:09-cv-1122

v

HON. JANET T. NEFF

OTTAWA COUNTY 58TH DISTRICT
COURT,

Defendant.

OPINION AND ORDER

This is a civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to the Magistrate Judge by this Court. Defendant has since filed a motion to dismiss, arguing that Plaintiff's claims should be dismissed, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief may be granted (Dkt 6). Plaintiff has also filed several motions, including: two motions for default judgment (Dkts 11, 15), a motion for an order of a Michigan conversion statute (Dkt 8), and a motion for a preliminary injunction (Dkt 14). Upon consideration of the motions, the Magistrate Judge issued two Reports and Recommendations (R & R's) (Dkts 16, 17).

In the first Report and Recommendation (Dkt 16), the Magistrate Judge recommended that this Court grant Defendant's motion and deny all of Plaintiff's motions, except for Plaintiff's second motion for default judgment, which was not discussed. In the second Report and Recommendation (Dkt 17), the Magistrate Judge recommended denial of Plaintiff's second motion for default judgment. The matter is presently before the Court on Plaintiff's objections to the Magistrate

Judge's decisions (Dkt 18). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Reports and Recommendations to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff makes several objections to the Magistrate Judge's decisions. First, Plaintiff seems to argue that the substantive problems with the R & R's themselves make them improper. Specifically, Plaintiff argues that the fact that the R & R's did not issue for approximately two months after a hearing on the case, the fact that the Magistrate Judge recommended denial of Plaintiff's motions with prejudice, and the fact that the R & R's arrived to Plaintiff in an opened envelope are all reasons why the recommendations are "illegal" (Dkt 18). This argument, however, is without merit. It is not apparent to the Court, and Plaintiff has not explained, how any of these facts are relevant to the whether the recommendations are in any way improper. Accordingly, these objections are denied.

Second, Plaintiff objects to the Magistrate Judge's conclusion that his complaint should be dismissed for failure to state a claim. He seems to argue that his allegations against Defendant and the employees of Defendant, if proven, would entitle him to relief (Dkt 18). This argument is also without merit. The Court agrees with the Magistrate Judge's conclusion that even an indulgent reading of Plaintiff's complaint does not reveal "*any* viable federal claims" (Dkt 16 at 3).

Finally, Plaintiff objects to the Magistrate Judge's recommendation that default judgment not be entered against Defendant. Plaintiff indicates that Defendant defaulted by failing to respond within twenty-one days of the filing of his complaint (Dkt 18). This argument is without merit. Defendant did not receive the complaint until December 15, 2009 (Def. Resp., Dkt 12 at 1).

Defendant filed a response within 21 days on January 5, 2010 (*id.*). The fact that Plaintiff may have filed his complaint with the Court on an earlier date does not affect the analysis: the date on which Defendant was actually served was the starting date for the 21 days to respond. Furthermore, even assuming that Defendant was late in filing a responsive pleading, the Court declines to order the entry of default judgment in this case as it would be against the interests of justice. *See United Coin Meter v. Seaboard Coastline RR*, 705 F.2d 839, 845 (6th Cir. 1983) (describing default judgment as a drastic remedy that should only be used in extreme circumstances).

Accordingly, this Court adopts the Magistrate Judge's Reports and Recommendations as the Opinions of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997).

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 18) are DENIED and the Reports and Recommendations (Dkts 16, 17) are APPROVED and ADOPTED as the Opinions of the Court.

IT IS FURTHER ORDERED that Plaintiff's motions for default judgment (Dkts 11, 15), motion for an order of a Michigan conversion statute (Dkt 8), and motion for a preliminary injunction (Dkt 14) are DENIED.

IT IS FURTHER ORDERED that the Defendant's motion for dismissal pursuant to FED. R. CIV. P. 12(b)(6) (Dkt 6) is GRANTED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Dated: June 14, 2010

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge